

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

BEFORE SMT. BEENA PILLIA, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA No.696/Bang/2023
Assessment year : 2016-17

SHRI JAIN RAJASTHANI VIDYA PRACHARAK MANDAL (R), Ghantikeri, HUBLI – 580 020. <b>PAN : AAETS 2505E</b>	Vs.	THE INCOME TAX OFFICER, Exemptions Ward 1, HUBBALLI.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Suman Lunkar, CA
Respondent by	:	Shri Parithivel, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	21.11.2023
Date of Pronouncement	:	.11.2023

**ORDER**

*Per Laxmi Prasad Sahu, Accountant Member*

This appeal is filed by the assessee against the DIN & Order ITBA/NFAC/S/250/2023-24/1053959488(1) dated 26.6.2023 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the AY 2016-17.

2. At the outset, we notice that the appeal by the assessee is belated by 26 days for which the assessee has filed condonation petition stating that assessment order was passed by the AO denying exemption u/s. 11

for want of copy of registration u/s. 12A by the assessee. The assessee filed rectification application before the AO. In the meantime, the assessee filed appeal before the CIT(Appeals) which was dismissed by order dated 26.6.2023. Further, rectification order u/s. 154 was passed on 10.7.2019 making addition of Rs.93,12,330. The appellate order passed by the CIT(Appeals) was not found in the records of assessee and assessee obtained copy of the order for filing appeal before the Tribunal. Therefore, there was delay in filing appeal and it was prayed that the delay may be condoned.

3. After hearing both the parties, we note there was reasonable cause for delay in filing the appeal before the Tribunal and following the decision of Hon'ble Apex Court decision in the case of Collector, Land Acquisition v. Mst. Katiji & Ors. (1987) 167 ITR 471, we condone the delay.

4. The brief facts of the case are that the assessee filed return of income u/s. 139(4A) on 21.12.2016 declaring income of NIL. The case was selected for scrutiny through CASS and statutory notices were issued to the assessee. The AO noted that the assessee is running educational institution and gross total income declared is Rs.2,29,46,105, revenue expenditure is Rs.1,17,31,590 and capital expenditure is Rs.26,23,176. Further the assessee has also accumulated or set apart Rs.1,30,00,000 u/s. 11(2) of the Act and accumulated Rs.86,00,000 during the year. The assessee failed to produce copy of certificate u/s. 12A of the Act. The AO also noted that

the assessee filed return and audit report in Form 10B belatedly and no reason was furnished by the assessee for belated filing in spite of providing opportunity. Therefore relying on CBDT Instruction F.No.267/842/77-(ITR)Part, dated 9.2.1978, the AO denied exemption u/s. 11 & 12 of the Act.

5. The AO noted that assessee has made accumulation of Rs.86,00,000 u/s. 11(2), but Form 10 was not filed. In response, the assessee filed a copy of meeting of the managing committee held on 3.8.2016 and copy of Form 10. The AO noted Form 10 was filed physically after 52 days of meeting held on 3.8.2016 and that the reason for accumulation is "*development of school and meet the objects of the trust*" is very general in nature and accumulation is artificial to escape taxation, therefore denied accumulation.

6. Aggrieved by the order of the AO, the assessee filed appeal before the CIT(Appeals). The CIT(A) issued various notices on different dates, but the assessee did not file any documents or written submissions. Accordingly, the CIT(A) decided the issue on the basis of material available before him and dismissed the appeal of the assessee. Aggrieved, the assessee is in appeal before the Tribunal.

7. The Id. AR submitted that the notices issued by the CIT(Appeals) was not served to the assessee, therefore the assessee could not respond. He filed a copy of Circular No.2/2020 [F.No.197/55/2-18-ITA-I] dated 3.1.2020 regarding condonation of delay in filing Form 10B and referred to para 4 to 6 of the Circular.

The Id. AR submitted that if a chance is given to the assessee, it will file necessary documents in support of its case before the department.

8. The Id. DR relied on the orders of lower authorities.

9. We have heard both the parties. During the hearing the Id. AR was directed to provide correct email id of the assessee for which he submitted that the email id provided in Form 36 is the correct email id. The assessee is directed to intimate the same to the department. Considering the prayer of the Id. AR of the assessee and in the interest of justice, we restore the issue to the Assessing Officer for *de novo* consideration and decision in accordance with law after giving reasonable opportunity of being heard to the assessee. The assessee is directed to file necessary documents in support of its case and not to seek unnecessary adjournment for early disposal of the case.

10. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 22<sup>nd</sup> day of November, 2023.

Sd/-

Sd/-

( BEENA PILLAI )  
JUDICIAL MEMBER

(LAXMI PRASAD SAHU )  
ACCOUNTANT MEMBER

Bangalore,

Dated, the 22<sup>nd</sup> November, 2023.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar  
ITAT, Bangalore.